Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1892

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT

v.

STEPHEN CHARLES WIESENFELD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

JURISDICTIONAL STATEMENT FILED JUNE 18, 1974
PROBABLE JURISDICTION NOTED OCTOBER 15, 1974

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

United States District Court for the District of New Jersey

Nos. 268-73

STEPHEN CHARLES WIESENFELD, ETC., PLAINTIFFS

v.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

Clerk's Certificate

I, Angelo W. Locascio, Clerk of the United States District Court for the District of New Jersey, do hereby certify that the docket entries and the papers enumerated below comprise the record on appeal in the above entitled matter.

Docketed Papers

1. Complaint.
2. Summons.
3. Application for a Three-Judge Court.
4. Notice of motion.
5. Order constituting a Three-Judge Court.
6. Answer.
7. Notice to take deposition of Stephen C. Wiesenfeld.
8. Defendant's motion to dissolve Three-Judge Court.
9. Defendant's opposition to plaintiff's motion to certify class action.
10. Affidavit of Lawrence Alpern.
11. Deposition of Stephen Wiesenfeld.
12. Transcript of hearing on 6-20-73.
13. Affidavit of Stephen Charles Wiesenfeld.
14. Opinion.
15. Order enjoining Secretary of HEW and for payments to plaintiff.
16. Notice of Appeal.
17. Letter designating record on appeal.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said court at Trenton in said District, this 31st day of May, 1974.

ANGELO W. LOCASCIO,
Clerk.

By RICHARD W. MORRIS,
Deputy.

United States District Court for the District of New Jersey

[Caption omitted]

[Filed February 24, 1973]

Complaint Class Action—Three-Judge Court Requested

I. PRELIMINARY STATEMENT

Plaintiff, individually and on behalf of all persons similarly situated, seeks to have this court declare unconstitutional on its face and as applied, 42 U.S.C. § 402(g), a provision of the Social Security Act authorizing "mother's insurance benefits" for a widow of any age who has in her care a child of an insured individual entitled to "child's insurance benefits" under 42 U.S.C. § 402(d). The statute is challenged on the ground that limitation of the benefit to females invidiously denies men and women the equal protection of the laws safeguarded by the due process clause of the fifth amendment to the United States Constitution. Exclusion of males from this Social Security benefit entails a dual discrimination: the Social Security contributions of the female wage earner are worth less than the contributions of a similarly situated male wage earner in terms of the protection afforded the family unit; the widowed father is denied assistance granted to an identically situated widowed mother.

Plaintiff, who qualifies for benefits under 42 U.S.C. § 402(g) in all respects except that he is a father, not a mother, a widower, not a widow, seeks an injunction requiring application of 42 U.S.C. § 402(g) in a nondiscriminatory manner to parents of both sexes, and damages for benefits due to him from the date he became a widowed father who has in his care a child entitled to benefits under 42 U.S.C. § 402(d).

II. JURISDICTION

1. This action for a declaration of rights, injunctive relief and damages arises under the fifth amendment to the Constitution of the United States. Jurisdiction is conferred upon this court by 28 U.S.C. § 1331. The matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000. Adjudication by a three-judge court is sought pursuant to 28 U.S.C. §§ 2282 and 2284. Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

III. PARTIES

A. PLAINTIFF

2. Stephen Charles Wiesenfeld, the named plaintiff, is a widower who has sole responsibility for the care of his infant son, Jason Paul Wiesenfeld. Plaintiff's wife, Paula Wiesenfeld, died giving birth to Jason Paul on June 5, 1972; for the seven years immediately preceding her death, she was employed as a school teacher and paid maximum Social Security contributions. Plaintiff is a citizen of the United States and the State of New Jersey and resides at 21 Harrison Street, Edison, New Jersey 08817.

3. Plaintiff sought Social Security benefits pursuant to 42 U.S.C. § 402(g) as a surviving spouse who has in his care a child

of an insured individual entitled to child's insurance benefits; his request for benefits as a widowed parent was denied solely on the ground of his sex.

B. CLASS ACTION

4. Plaintiff brings this action on his own behalf and, pursuant to Rule 23(b) (2), (3) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The members of the class similarly situated are all widowers who have in their care a child of an insured individual entitled to child's insurance benefits under 42 U.S.C. § 402(d), and who are denied insurance benefits under 42 U.S.C. § 402(g) solely on the ground of their sex. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class affecting the right of all members to due process and equal protection of the laws as guaranteed by the fifth amendment to the United States Constitution; the claims of the named plaintiff are typical of the claims of the class; the named plaintiff will fairly and adequately protect the interests of the class; and the party opposing the class acts or refuses to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

C. DEFENDANT

5. Defendant Secretary of the United States Department of Health, Education and Welfare is responsible for implementation, administration and enforcement of the Social Security Act. Defendant is sued in his official capacity and as representative of all other administrators, officers and agents charged with implementing, administering and enforcing the Social Security Act in a manner that denies to widowers who have in their care a child of insured individual entitled to child's insurance benefits, the benefits accorded to similarly situated widows.

IV. STATEMENT OF THE CLAIM

6. Plaintiff Stephen Charles Wiesenfeld is a widower who has sole responsibility for the care of his son, Jason Paul Wiesenfeld, born June 5, 1972. Paula Wiesenfeld, plaintiff's wife, died giving birth to Jason Paul Wiesenfeld on June 5, 1972.

7. Paula and Stephen Charles Wiesenfeld were married on November 15, 1970.

8. During the 1965–66 academic year Paula Wiesenfeld was employed as a teacher in Ann Arbor (Flint), Michigan. During the four academic years from 1966 to 1970 she was employed as a teacher at Highlands Jr. High School, White Plains, New York. For the two academic years prior to her death, she was employed as a teacher at Edison High School, Edison, New Jersey. At all times during the seven years immediately preceding her death, maximum contributions were deducted from her salary and paid to Social Security. The Social Security Account Number established for Paula Wiesenfeld is 079–34–7538. From the time of her marriage in November, 1970 until her death in June, 1972, Paula Wiesenfeld's earnings substantially exceeded the earnings of Stephen Charles Wiesenfeld.

9. Jason Paul Wiesenfeld, from the time of his birth, has been continuously and remains in the care of plaintiff Stephen Charles Wiesenfeld.

10. In June, 1972, following his wife's death, Stephen Charles Wiesenfeld applied for benefits at the Social Security Office in New Brunswick, New Jersey. He was informed by an official at that office that his son Jason Paul Wiesenfeld was eligible for child's insurance benefits under 42 U.S.C. § 402(d), but that benefits authorized under 42 U.S.C. § 402(g) for a widowed parent caring for a child of an insured individual entitled to child's benefits were payable to women only, not to men.

11. From June through September 1972, pursuant to 42 U.S.C. § 402(d), child's insurance benefits of $206.90 per month were received by plaintiff for his son, Jason Paul Wiesenfeld; from October, 1972 to the present, the monthly child's insurance benefits for Jason Paul Wiesenfeld have been $248.30. The benefits authorized by 42 U.S.C. § 402(g) entitle a widow identically situated to Stephen Charles Wiesenfeld to monthly payments for herself in the same amounts ($206.90 per month from June to October, 1972, $248.30 per month thereafter). Plaintiff was and continues to be denied these monthly benefits solely on the ground of his sex.

12. The exclusion of plaintiff from the benefits authorized by 42 U.S.C. § 402(g) on the sole ground that he is a father, not a mother, a widower, not a widow denies to plaintiff and all other men similarly situated due process and equal protection of the laws guaranteed by the fifth amendment to the United States Constitution.

13. Plaintiff and the members of the class he represents are suffering present irreparable injury which will continue in the future by reason of the discriminatory exclusion herein complained of; he and the members of the class he represents are and will remain in constant subjection to a constitutionally prohibited denial of due process and equal protection of the laws so long as the benefits authorized by 42 U.S.C. § 402(g) are withheld from persons solely on the ground of their sex. Pursuit of relief through administrative channels would be futile in view of the explicit limitation of 42 U.S.C. § 402(g) to females. Plaintiff is without adequate remedy at law to redress the unlawful exclusion herein complained of other than this action for a declaration of rights, an injunction and damages.

V. PRAYER FOR RELIEF

Wherefore, plaintiff respectfully prays, on behalf of himself and all other persons similarly situated, that this court:

(1) Convene a three-judge court pursuant to 28 U.S.C. §§ 2282 and 2284 to determine this controversy.

(2) Certify that this action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

(3) Declare that 42 U.S.C. § 402(g) is unconstitutional to the extent that men and women are not treated equally thereunder.

(4) Issue a preliminary and final injunction restraining defendant and his agents from denying benefits under 42 U.S.C. § 402(g) to plaintiff and his class solely on the ground of sex, and requiring application of 42 U.S.C. § 402(g) in a nondiscriminatory manner to parents of both sexes.

(5) Order payment to plaintiff Stephen Charles Wiesenfeld of the benefits due to him commencing June, 1972 and each month thereafter.

(6) Assess reasonable costs and attorneys fees.

(7) Grant such other and further relief as this court deems just and proper.

Respectfully submitted,

JANE Z. LIFSET,
11th Floor 570 Broad Street,
Newark, N.J.

United States District Court for the District of New Jersey

CIVIL ACTION No. 268–73

STEPHEN CHARLES WIESENFELD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFF

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

Complaint-Class Action—Three-Judge Court Requested

JANE Z. LIFSET,
11th Floor, 570 Broad Street,
Newark, N.J.

United States District Court for the District of New Jersey

CIVIL ACTION FILE No. 268–73

STEPHEN CHARLES WIESENFELD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFF

v.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

Summons

To the above named Defendant:

You are hereby summoned and required to serve upon Jane Z. Lifset, Esq., plaintiff's attorney, whose address is 570 Broad Street, Newark, New Jersey 07102, an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

ANGELO W. LOCASCIO,
Clerk of Court.
MARTHA STONE,
Deputy Clerk.

FEBRUARY 27, 1973.

564 325—74——2

United States District Court for the District of New Jersey

No. Civil 268–73

STEPHEN CHARLES WIESENFELD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFF

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

Notice of Allocation and Assignment

Pursuant to Rule 11 of the General Rules of this Court I have allocated the above-entitled matter to *Trenton*.

Please file all pleadings and make all motions returnable there.

This Action has been assigned to Judge *Clarkson S. Fisher*.

ANGELO W. LOCASCIO,
Clerk.

By MARTHA STONE,
Deputy.

FEBRUARY 27, 1973.

The court has directed that counsel be informed that there will be strict enforcement of General Rule 15 of the local rules of this court (Completion of discovery proceedings), *and sanctions may be imposed for failure to comply with the rule and orders entered pursuant thereto: Including dismissal of the action and suppression of the defense.*

United States District Court for the District of New Jersey

[Caption omitted]

[Filed May 24, 1973]

Answer

Herbert J. Stern, United States Attorney for the District of New Jersey appearing on behalf of the defendant, by way of Answer to the Complaint, avers and says:

PRELIMINARY STATEMENT OF DEFENDANT

The following answer to plaintiff's Complaint is based on information available to the defendant at this time. The claims folder of the plaintiff is currently being reviewed and an affidavit or other appropriate proofs will be submitted to the Court, fully setting forth the facts as ascertained by the defendant. A motion to dismiss, or in the alternative for summary judgment, with supporting memorandum will be submitted to the Court on behalf of the defendant as soon as possible after the affidavit or other appropriate proofs setting forth the facts, as ascertained by the defendant, are available.

1. Defendant denies the allegations in plaintiff's preliminary statement.

2. Defendant denies the allegations contained in paragraph 1 of plaintiff's complaint and alleges the sole basis for jurisdiction under Title II of the Social Security Act is in section 205 (g) of the Social Security Act, 42 U.S.C. 405(g). Defendant denies jurisdiction exists under 28 U.S.C. 1331, 2282, 2284, 2201 and 2202.

3. Defendant has insufficient knowledge to answer the allegations contained in paragraphs 2 and 3 of plaintiff's complaint and therefore denies the same.

4. Defendant denies the allegations contained in paragraph 4 of plaintiff's complaint and further alleges that plaintiff is not entitled to maintain a class action in this case.

5. Defendant admits the Secretary of Health, Education, and Welfare is responsible for implementation, administration and enforcement of the Social Security Act but denies the remaining allegations of paragraph 5 of plaintiff's complaint.

6. Plaintiff has insufficient knowledge to answer the allegations contained in paragraphs 6, 7, 8 and 9 of plaintiff's complaint and therefore denies the same.

7. Defendant admits that Jason Paul Wiesenfeld was found eligible for child's insurance benefits but has insufficient knowledge to answer the remaining allegations contained in paragraph 10 of plaintiff's complaint and therefore denies the same.

8. Defendant denies plaintiff was and continues to be denied benefits solely on the basis of sex and has insufficient knowledge to answer the remaining allegations contained in paragraph 11 of plaintiff's complaint.

9. Defendant denies the allegations contained in paragraphs 12 and 13 of plaintiff's complaint.

FIRST SEPARATE DEFENSE

This Court lacks subject matter jurisdiction, for the sole basis for jurisdiction in Title II cases under the Social Security Act

is provided under section 205(g), 42 U.S.C. § 405(g). Jurisdiction of the court set out in section 205(g) is made exclusive by section 205(h) of the Act, 42 U.S.C. § 405(h) and, therefore, this Court lacks jurisdiction under 28 U.S.C. §§ 1331, 2201 or 2202.

SECOND SEPARATE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

Wherefore, defendant respectfully prays that this Court:

1. deny plaintiff's request for preliminary injunction.
2. deny plaintiff's request that a three-judge court be convened.
3. refuse to certify this case as a class action.
4. dismiss this action with prejudice for lack of jurisdiction and because plaintiff fails to state a claim for which relief can be granted, or in the alternative,
5. grant judgment for the defendant, and
6. grant such other relief as is just and proper.

HERBERT J. STERN,
U.S. Attorney.

By BERNARD S. DAVIS,
Assistant U.S. Attorney.

United States District Court for the District of New Jersey

STEPHEN CHARLES WIESENFELD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFF

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE, DEFENDANT

Motion for Certification of Class Action and Summary Judgment and Supporting Papers

JANE Z. LIFSET, Esq.,
185 Watsessing Avenue,
Bloomfield, N.J.,
Attorney for Plaintiff.

United States District Court for the District of New Jersey

[Caption omitted]

Affidavit in Support of Plaintiff's Motion for Summary Judgment

I, Stephen Charles Wiesenfeld, residing at 21 Harrison Street, Edison, New Jersey, being duly sworn upon my oath according to law depose and say:

1. I am the Plaintiff in the above-captioned action.

2. I am a widower who has sole responsibility for the care of my infant son, Jason Paul Wiesenfeld, born June 5, 1972.

3. My wife, Paula Wiesenfeld, died giving birth to Jason Paul on June 5, 1972.

4. My wife and I were married on November 15, 1970.

5. During the 1965–66 academic year, my wife Paula was employed as a teacher in Ann Arbor (Flint), Michigan. During the four years from 1966 to 1970 she was employed as a teacher at Highlands Junior High School, White Plains, New York. For the two academic years prior to her death, she was employed as a teacher at Edison High School, Edison (Middlesex), New Jersey. At all times during the seven years immediately preceding her death, maximum contributions were deducted from her salary and paid to Social Security. The Social Security Account Number established for Paula Wiesenfeld is 079–34–7538.

6. From the time of our marriage in November, 1970, until her death in June, 1972, Paula's earnings substantially exceeded mine. In 1970, Paula earned $9808.00; I earned $3100.00. In 1971, Paula earned $10686.00; I earned $2188.00. Until her death on June 5, 1972, Paula earned $6836.35; I earned $2475.00 in the year 1972.

7. Since the time of his birth, my son Jason Paul has been continuously and remains in my care.

8. In June 1972, following my wife's death, I applied for benefits for myself and my son at the Social Security Office in New Brunswick, New Jersey. An official there informed me that my son Jason Paul was eligible for child's insurance benefits under U.S.C. § 402(d), but that insurance benefits for a widowed parent having sole responsibility for a child of the insured, authorized under 42 U.S.C. § 402(g), were available for women only and that there was no provision authorizing

benefits for men having sole responsibility for a child of the insured. I was thereupon furnished with and completed an application for benefits on behalf of my son. No application for benefits for myself as a widowed parent was furnished me. I was informed at the Social Security Office that no application for benefits on my own behalf could be entertained.

9. From June through September 1972, pursuant to 42 U.S.C. § 402(d), my son Jason received child's insurance benefits of $206.90 per month; from October 1972, to the present, my son Jason has received $248.30 per month in benefits.

10. I am informed and believe that a widow in my position, having sole care for an infant of the insured, would be entitled to monthly benefits for herself in the same amounts ($206.90 per month from June to September, 1972; $248.30 per month thereafter).

11. I am informed and believe that I was denied benefits as a widowed parent solely because of my sex.

STEPHEN CHARLES WIESENFELD.

Sworn before me this 28th day of March, 1973.

CATHERINE E. CICHOWSKI,
Notary Public of New Jersey.
My Commission Expires Oct. 31, 1973.

United States District Court for the District of New Jersey

[Filed April 17, 1973]

[Caption Omitted]

Order Constituting a Three-Judge Court

Pursuant to the provisions of Section 2284, Title 28, United States Code, I designate the Honorable James Hunter, III, United States Circuit Judge, and the Honorable Lawrence A. Whipple, United States District Judge, to sit with the Honorable Clarkson S. Fisher, United States District Judge, as members of the Court for the hearing and determination of the above captioned matter.

COLLINS J. SEITZ,
Chief Judge,
Third Judicial Circuit.

DATED: April 12, 1973.

United States District Court for the District of New Jersey

[Caption Omitted]

AFFIDAVIT OF LAWRENCE ALPERN

I, Lawrence Alpern, being duly sworn, depose and say as follows:

(1) The Office of the Actuary of the Social Security Administration performs the following functions:

conducts and directs the actuarial program of the Social Security Administration;

performs actuarial and demographic research into social insurance and related programs, and makes actuarial appraisals of existing and proposed programs;

studies, for both the immediate and distant future, problems of financing program costs, estimating future workloads, and evaluating operations of the Social Security four trust funds;

develops and analyzes actuarial data for benefit estimates and valuations;

provides technical and consultative services to Congressional committees, Members of Congress, public advisory committees, and other Federal agencies; and

testifies concerning actuarial estimates before Congressional committees considering legislative changes in the Social Security programs.

(2) The Old Age Survivors and Disability Insurance program is financed by required contributions from covered workers, their employers and self-employed individuals. The program's financial operations are administered through a trust fund. A brief explanation of the operations of the fund is set out at pages 2–5, under the heading "Nature of the Trust Funds", in the *1972 Annual Report of the Trustees of the Federal Old Age and Survivors Insurance and Disability Insurance Trust Funds*, H. Rpt. No. 92–307, 92nd Cong., 2d Sess, which report is attached hereto as defendant's exhibit F. At the time the report was issued, the Old Age, Survivors and Disability Insurance system was in close actuarial balance. *Report, Supra* at 32 and 33. The Congressional intent that the program be self-supporting has been and continues to be followed. *See Com-*

mittee on Ways and Means Report on the 1967 Amendments to the Social Security Act, H. Rpt. No. 1300, 81st Cong., 1st. Sess., at page 31. Also attached, as "Defendant's exhibit E," is a table showing the annual maximum amount of taxable earnings and the annual contribution rate for Old Age Survivors Insurance (OASI), Disability Insurance (DI), and Hospital Insurance (HI).

(3) It has been determined in the Office of the Actuary that if the eligibility requirements in present law were modified so that benefits would be payable to a father of an entitled child under conditions similar to those under which benefits are payable to a mother under section 202(g) of the Act, 42 U.S.C. 402 (g), and the modification were made effective for a month in 1973, the additional benefit payments in the first full calendar year, 1974, over and above benefit payments under present law, would amount to an estimated $20 million. The long-range cost of the above change, averaged over a 75-year period, is estimated to be 0.01 percent of taxable payroll

(4) The Office of the Actuary has prepared the information listed in the tables below concerning costs of changes in the OASDI program to eliminate differences in payment of benefits now made to women but not men. Estimates of the number of persons immediately affected (i.e., persons who could receive benefits beginning with the effective month) and of benefit expenditures in the first full calendar year are shown below for several proposed changes in the OASDI program. In making these estimates, it was assumed that (1) each proposed change would become effective in 1973, so that the first full calendar year in which additional benefits would be paid is 1974; and (2) each proposal is to be taken as a single change—i.e., the estimates for each proposal are shown without considering the effect of any interaction with any of the other proposed changes:

	Number of persons immediately affected (in thousands)	Additional benefit payments in 1974 (in millions)
1. Eliminate the dependency requirement of sec. 202(c) for entitlement to husband's benefits (H.R. 1967)	250	$200
2. Eliminate the dependency requirement of sec. 202(d) for entitlement to widower's benefits (H.R. 1967)	150	125
3. Provide benefits for widowed fathers with entitled children on the same basis as benefits are provided under sec. 202(g) for widowed mothers with entitled children (H.R. 1967)	15	20
4. Provide benefits for divorced wives husbands on the same basis as benefits are provided for divorced former wives	5	5
5. Provide benefits for husbands and widowers of transitional insured females on the same basis as benefits are provided for wives and widows of transitional insured males	3	2
Total, if all above changes are taken as a single package, including interaction	420	350

(5) In the 1972 Amendments to the Act, PL 92–603, Congress equalized the provisions of section 215(a) and (b) of the Act. Prior to amending § 215(a) and (b), "the method of computing benefits for men and women differed in that years up to age 65 were taken into account in determining average earnings for men, while for women only years up to age 62 were taken into account. Also, benefit eligibility was figured up to age 65 for men, but only up to age 62 for women. Under the new law, these differences are eliminated by applying to men the rules which previously applied only to women. The new provision will become effective, starting January 1973 and will be fully effective in January 1975 by reducing the age for men to 64 in 1973, to 63 in 1974 and to 62 in 1975. About 190,0000 people will be affected immediately and [an estimated] $14 million in additional benefits will be paid in 1974." *Summary of Social Security Amendments of 1972*, Joint Publication of Committee on Finance of the U.S. Senate and Committee on Ways and Means of the U.S. House of Representatives. If the 1972 Amendment were modified so that the age 62 computation provision were made applicable to beneficiaries on the rolls, as well as to future beneficiaries, and were made effective for a month in 1973, additional benefit payments in calendar year 1974—the first full calendar year—over and above benefit payments under present law would amount to an estimated $1.2 billion. The long-range cost of the proposed change, averaged over a 75-year period, is estimated to be 0.05% of taxable payroll.

(6) The long range cost to eliminate other differences between benefits for men and women would be as follows:

	Percent
Remove dependency requirement for widowers	0.06
Remove dependency requirement for husbands	.03
Provide a benefit for a former divorced husband	(1)
Provide "father's" benefit equivalent to "mother's" benefit	.01

[1] Negligible.

(7) In summary, if the modifications described in paragraphs 3 through 6 were made effective for a month in 1973, the additional benefit payments in the first full calendar year, 1974, over and above benefit payments under present law, would amount to an estimated $1\frac{1}{2}$ billion. The long-range cost of the described changes, averaged over a 75-year period, is estimated to be 0.15 percent of taxable payroll.

LAWRENCE ALPERN,
Deputy Chief Actuary.

Subscribed and sworn to before me this 19th day of June 1973.

MARY A. BRENNAN,
Notary Public.
My Commission expires June 30, 1974.

Past and Future Contribution Rates and Maximum Amount of Taxable Earnings

Reflects Conference Agreements on H.R.1

Calendar years	Maximum taxable amount of annual earnings	Contribution Rates (Percent of Taxable Earnings)									
		Employer and Employee, Each					Self-Employed Persons				
		OASDI			HI	Total	OASDI			HI	Total
		Total	OASI	DI			Total	OASI	DI		
1937-49	$3,000	1.000	1.000	--	--	1.000	--	--	--	--	--
1950	3,000	1.500	1.500	--	--	1.500	--	--	--	--	--
1951-53	3,600	1.500	1.500	--	--	1.500	2.250	2.250	--	--	2.250
1954-56	3,600	2.000	2.000	--	--	2.000	3.000	3.0000	--	--	3.000
1957-/56	4,200	2.000	2.000	--	--	2.000	3.000	3.0000	--	--	3.000
1957-58	4,200	2.250	2.000	0.250	--	2.250	3.375	3.0000	0.3750	--	3.375
1959	4,800	2.500	2.250	.250	--	2.500	3.750	3.3750	.3750	--	3.750
1960-61	4,800	3.000	2.750	.250	--	3.000	4.500	4.1250	.3750	--	4.500
1962	4,800	3.175	2.875	.250	--	3.175	4.700	4.3250	.3750	--	4.700
1963-65	4,800	3.625	3.375	.250	--	3.625	5.400	5.0250	.3750	--	5.400
1966	6,600	3.900	3.500	.350	0.350	4.200	5.800	5.2750	.5250	0.350	6.150
1967	6,600	3.900	3.550	.350	.500	4.400	5.900	5.3750	.5250	.500	6.400
1968	7,800	3.800	3.325	.475	.600	4.400	5.800	5.0875	.7125	.600	6.400
1969	7,800	4.200	3.725	.475	.800	5.000	6.300	5.5875	.7125	.800	6.900
1970	7,800	4.200	3.690	.510	.800	5.000	6.300	5.4750	.8250	.800	6.900
1971	7,800	4.600	4.050	.550	.600	5.200	6.900	6.0750	.8250	.600	7.500
1972	9,000	4.600	4.050	.550	.600	5.200	6.900	6.0750	.8250	.600	7.500
1973	10,800	4.850	4.300	.550	1.000	5.850	7.000	6.2050	.7950	1.000	8.000
1974	12,000	4.850	4.300	.550	1.000	5.850	7.000	6.2050	.7950	1.000	8.000
1975-77	subject to automatic increase after 1974	4.850	4.300	.550	1.000	5.850	7.000	6.2050	.7950	1.000	8.000
1978-80		4.850	4.225	.575	1.350	6.050	7.000	6.1600	.8400	1.350	8.350
1981-85		4.850	4.225	.575	1.350	6.150	7.000	6.1600	.8400	1.350	8.350
1986-2010		4.850	4.225	.575	1.350	6.250	7.000	6.1600	.8400	1.350	8.350
2011+		5.850	5.100	.750	1.350	7.300	7.000	6.1050	.8950	1.350	8.350

Defendant's Exhibit E

United States District Court, District of New Jersey

CIVIL ACTION No. 296–73

DEPOSITION OF STEPHEN WIESENFELD

[caption omitted]

Transcript of testimony taken by and before Lynn Durkin, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, at the office of Herbert J. Stern, United States Attorney, Federal Building, Newark, New Jersey, on Tuesday, June 12, 1973, commencing at 9:30 a.m.

APPEARANCES

Ms. Jane Z. Lifset and *Ms. Rita L. Bender*, for the Plaintiff.

Bernard S. Davis, Esq., Assistant United States Attorney, for the Defendant.

Q. And from what period to what period were you employed by them?

A. January, 1969, through October 31, 1972. That date in January would be the last day of the month.

Q. Were you salaried there or self-employed?

MS. LIFSET. I object to this line of questioning also. Go ahead and answer.

A. Self-employed.

Q. Could you repeat that please?

A. Polatschek, P-o-l-a-t-s-c-h-e-k.

Q. Could you repeat that please?

A. P-o-l-a-t-s-c-h-e-k.

Q. And when were you married to her, please?

A. November 15, 1970.

Q. And at the time of her death were you still married to her?

A. Yes.

Q. Could you give me the extent of your education please?

A. Bachelor of Science degree.

MS. LIFSET. Excuse me. I object to this question also but go ahead.

A. Bachelor of Science degree in mathematics. Master of Science degree in mathematics. Master of Business Administration and Management. I have a correspondence law degree from LaSalle.

Q. JD?

A. LOB. Does not qualify me to practice law even if I take the bar exam.

Q. You stated that you have a Bachelor of Science in mathematics, a Master's degree in mathematics and what was the third degree?

A. Master of Business Administration and Management.

Q. Do you recall offhand when you attained these degrees?

A. Bachelor of Science degree was January, 1965. Master of Science degree was January, 1967. Master of Business Administration, May, 1969. The degree from La Salle was March, 1968.

Q. From what school did you get the Bachelor of Science?

A. Fairleigh Dickinson.

Q. Master of Science?

A. Fairleigh Dickinson.

Q. As well for the Master of Business?

A. Yes.

Q. How old is your son at present?

A. One year old on June 5.

Q. This coming June?

A. That makes him one year and one week today, 53 weeks.

United States District Court for the District of New Jersey

CIVIL ACTION No. 268–73

STEPHEN CHARLES WIESENFELD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PLAINTIFF,

v.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT.

Affidavit

I, Stephen Charles Wiesenfeld, residing at 21 Harrison Street, Edison, New Jersey, being duly sworn upon my oath according to law depose and say:

1. I am the Plaintiff in the above-captioned matter.

2. As of September 14, 1973, I was dismissed from my employment as technical representative at Cyphernetics. I am presently unemployed.

3. In the past few weeks, I have been looking for employment in my field of work, consulting in project management, finance, and administration. However, due to the responsibility of car-

ing for my son Jason, I am extremely reluctant to return to work in this field, more specifically for the following reasons:

(a) Employment in consulting requires extensive travel, in both daily commuting and overnight business trips, which would substantially limit the amount of time I would have available to be with my son Jason.

(b) I have encountered severe difficulty in obtaining the services of a suitable housekeeper, to whom I could conscientiously entrust Jason's care. I have employed four housekeepers in the past year, including one for whom I financed transportation from Europe. At the present time I am not employing a housekeeper.

4. I am uncertain as to my employment future. I am considering opening a retail shop near my home, so that I could take Jason to work with me during the day and thus not require the services of a housekeeper. However, this would result in a substantial decrease in income for my family.

5. Since September 14, 1973, I have been fully qualified for the Social Security benefits authorized by 42 U.S.C. section 402(g), except for the sex requirement, and I would take full advantage of these benefits if they were available to me.

STEPHEN CHARLES WIESENFELD.

Sworn and subscribed to before me this 28th day of September, 1973.

CATHERINE E. CICHOWSKI,
Notary Public of New Jersey,
My Commission Expires Oct. 31, 1973.

Supreme Court of the United States

No. 73-1892

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT,

v.

STEPHEN CHARLES WIESENFELD, ETC.

Appeal from the United States District Court for the District of New Jersey.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

OCTOBER 15, 1974.